

1 BILL NO. S-85-12-01

2 SPECIAL ORDINANCE NO. S-239-85

3 ORDINANCE DESIGNATING THE BOARD OF PUBLIC WORKS  
4 AND SAFETY AS LEASING AGENT FOR THE CITY OF FORT WAYNE,  
5 INDIANA; APPROVING THE LEASE OF CERTAIN PROPERTY BY THE  
6 CITY OF FORT WAYNE, INDIANA AND/OR ITS MUNICIPALLY OWNED  
7 UTILITIES; APPROVING A FORM OF LEASE; AUTHORIZING  
8 ACCEPTANCE OF A LESSOR; AND APPROVING OTHER ACTIONS  
9 WITH RESPECT THERETO.

10 WHEREAS, the City of Fort Wayne and its municipally owned  
11 utilities need to acquire an extensive number of items of personal  
12 property for continued effective operations; and

13 WHEREAS, the Board of Public Works and Safety has, in the  
14 past, generally coordinated the acquisition of items of personal  
15 property and has let bids therefore; and

16 WHEREAS, numerous bids have been let for the acquisition of  
17 items of personal property, and this Common Council has approved the  
18 acquisition of said items of personal property; and

19 WHEREAS, this Common Council now deems it in the public  
20 interest to lease said items of personal property rather than  
21 purchase said items; and

22 WHEREAS, sufficient money has been appropriated and suf-  
23 ficient net revenues are available from the City's municipally owned  
24 utilities to make lease rental payments on a timely basis as  
25 required for the leasing of said property; and

26 WHEREAS, a form of lease with option to purchase has been  
27 reviewed and is deemed appropriate for the lease of said items of  
28 personal property by the City and/or its utilities; and

29 WHEREAS, notices have been published requesting proposals  
30 from lessors to acquire the items of personal property and to lease  
31 same to the City and its utilities, pursuant to the terms and con-  
32 ditions contained in the form of lease; and

33 WHEREAS, the proposed lease provides for fair and reason-  
34 able rental and other equitable terms and conditions and, further,  
35 that the execution of said lease will permit the use and acqui-  
36 sition of the items of personal property; and

1       tion of said property within the present financial capabilities of  
2       the City and its utilities and therefore same is in the public  
3       interest.

4               NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE  
5       CITY OF FORT WAYNE, INDIANA THAT:

6               SECTION 1. This Common Council finds that the Board of  
7       Public Works and Safety should be and hereby is designated as the  
8       leasing agent for the City of Fort Wayne, Indiana and its utilities  
9       for the transactions herein contemplated.

10               SECTION 2. The Common Council of the City of Fort Wayne  
11       hereby authorizes the City and its utilities to lease, as lessees,  
12       those items of personal property listed on the attached Exhibit "A",  
13       made a part hereof. It is understood that the exact lessor purchase  
14       costs for such items of personal property listed on the Exhibit "A"  
15       shall be determined in accordance with bidding procedures of this  
16       City and accordingly subject to approval by this Council.

17               SECTION 3. The form of the lease, with option to purchase,  
18       for said lease is attached hereto as a part hereof, as Exhibit "B".  
19       This form of lease, with option to purchase, shall be used by the  
20       City and its utilities for the transactions herein contemplated and  
21       said form of lease is hereby approved and ratified. This lease form  
22       may be modified only to the extent that such modifications are not  
23       material in form or consideration. Authority is hereby given for  
24       the Board of Public Works and Safety to enter into one lease or two  
25       leases as determined by the City Attorney and Bond Counsel.

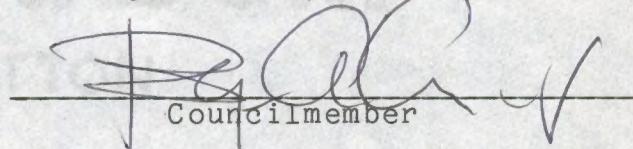
26               SECTION 4. The Board of Public Works and Safety of the  
27       City of Fort Wayne is hereby designated as the City's leasing agent  
28       herein and as said leasing agent is empowered and authorized to  
29       award lessor rights to the most responsive and responsible bidder.

30               SECTION 5. The Mayor and the Board of Public Works and  
31       Safety are empowered and authorized to execute, on behalf of the  
32       City and its utilities, leases and other documents as contemplated

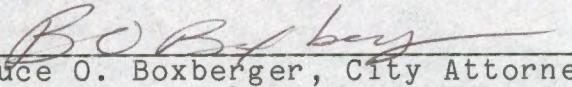
1 herein with the lessor so selected.

2 SECTION 6. Lease payments for all Civil City leases  
3 entered into hereunder shall be subject to annual appropriation by  
4 this Council.

5 SECTION 7. This Ordinance shall be in full force and  
6 effect from and after its passage and approval by the Mayor.

7   
8 Councilmember

9 APPROVED AS TO FORM AND LEGALITY.

10   
11 Bruce O. Boxberger, City Attorney  
12 Dated this 2d day of December, 1985.

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Read the first time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted, read the second time by title and referred to the Committee \_\_\_\_\_ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.M., E.S.

DATE: \_\_\_\_\_

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>7</u>	<u>1</u>	_____	<u>1</u>	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	_____	_____	_____	<u>✓</u>	_____
<u>HENRY</u>	<u>✓</u>	_____	_____	_____	_____
<u>REDD</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	<u>✓</u>	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 12-10-85

*Sandra E. Kennedy*  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. 1-239-85 on the 10th day of December, 1985.

ATTEST:  
*Sandra E. Kennedy*  
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

*James S. Stier*  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of December, 1985, at the hour of 11:00 o'clock AM, E.S.T.

*Sandra E. Kennedy*  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 12th day of December, 1985, at the hour of 8:30 o'clock AM, E.S.T.

*Win Moses, Jr.*  
WIN MOSES, JR., MAYOR

## Lease Property Summary

## Equipment

<u>City Agency</u>	<u>Description</u>
04-25-84 POLICE DEPT	A11552 10 RADIOS
01-01-81 FIRE DEPT	A1699 10 FIRE PUMPER
01-01-81 FIRE DEPT	A1699 10 FIRE PUMPER/AERIAL
01-01-25-84 COMMUNICATIONS	A1699 10 RADIOS
01-01-01-81 STREET DEPT	A15107 10 RADIOS
01-01-01-81 COMMUNICATIONS	A16184 10 SCALE
01-01-01-81 STREET DEPT	A16184 10 ELECTRONIC EQUIPMENT
01-01-01-81 TRAFFIC ENG	A16499 10 ASPHALT PLANT
01-01-11-84 C.U.GAR. II-MHS, 1-WPCN, 1-STREET	A16730 10 FIRE ALARM DECODERS
02-29-83-85 BOARD OF WORKS	A14373 10 FRONT END LOADERS (1)
7-26-85 BOARD OF WORKS	A16925 10 INFRASTRUCTURE
	INFRASTRUCTURE

STREET DEPT	7	SWEPTER BROOM	A35012
COMMUNICATIONS	7	WALLS	A35360
TRAFFIC ENG	7	CUTTER MACHINE	A36339
COMMUNICATIONS	7	RECODER SYSTEM	A37533
COMMUNICATIONS	7	INTERFACE PANELS	A37970
TRAFFIC ENG	7	PORTABLE RADIO	A38533
TRAFFIC ENG	7	WELDER	A38638
TRAFFIC ENG	7	AIR COMPRESSOR	A39100
TRAFFIC ENG	7	AIR BOARDS	A39102
TRAFFIC ENG	7	SAFETY DRUMS	A39227
STREET ENGINEERING	7	COMPUTER SOFTWARE	A39413
STREET ENGINEERING	7	COMPUTER AT (1)	A39616
STREET DEPT	7	COMPUTER COLOR (1)	A39617
MAYORS OFFICE	7	PAINTER	A39618
COMMUNICATIONS	7	SOFTWARE	A39619
COMMUNICATIONS	7	COMPUTER (2)	A39620
FIRE DEPT	7	COMPUTERS (2)	A39621
FIRE DEPT	7	SOFTWARE	A39622
POLICE DEPT	7	COMPUTER (2)	A39623
POLICE DEPT	7	SOFTWARE	A39624
BOARD OF SAFETY	7	COMPUTERS (1)	A39625

**Amount**

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ELC	186	995.67
KIP	876	794.00
LRP	847	745.00
L E	846	470.00
CO	125	087.00
	421	9 214.00
	415	6 020.00
	172	450.00
	133	036.00
	145	380.00
	207	131.00
	10	55.00

\$2,577,054.69

441,347,020.00

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<u>City Agency</u>	<u>Equipment Description</u>	<u>Supplier</u>	<u>Amount</u>
04-17-83 BOARD OF SAFETY	A39626 7 SOFTWARE	COMPUTER CORNER	\$903.45
05-28-83 STREET DEPT	A10028 7 RADIO PARTS	MOTOROLA	42,914.00
04-22-83 BOARD OF WORKS	A10012 7 COPIER	IBM	\$11,201.00
03-22-83 STREET DEPT	A10013 7 COPIER	PERF	\$4,222.85
03-23-83 EC. DEVEL.	A10014 7 COPIER	HODISER PHOTO	10,516.25
05-23-83 CITY CLERK	A10079 7 COPIER UPGRADE \$500	FORT WAYNE BUS PRODUCTS	\$7,472.50
04-12-84 BOARD OF SAFETY	A10329 7 SOFTWARE	COMPUTER CORNER	\$928.50
09-27-84 C U GARAGE (STREET DEPT)	A12499 7 SNOW PLOW	DEED EQUIPMENT	\$7,491.00
10-13-84 PURCHASING	A12794 7 SOFTWARE	LOGIC BASE	\$1,084.00
01-07-85 CITY U GARAGE	A13265 7 LIFTS	HAKON MANT	\$13,422.00
03-04-85 C U GARAGE (PEN DEPT)	A13905 7 AIR COMPRESSORS	MCDONALD MACHINERY	\$10,400.00
01-15-85 CITY U GARAGE	A14182 7 COMPUTER PRINTER	KRYER SYSTEMS	\$2,750.00
01-16-85 PERSONNEL	A14215 7 COMPUTER (1)	MICROAGE	\$2,106.00
01-16-85 PERSONNEL	A14216 7 SOFTWARE	COMPUTER CORNER	\$301.15
04-16-85 PURCHASING	A14217 7 SOFTWARE	COMPUTER CORNER	\$610.65
01-16-85 PURCHASING	A14218 7 COMPUTER (1)	MICROAGE	\$2,745.00
01-16-85 ACCOUNTING	A14219 7 COMPUTER (1)	MICROAGE	\$2,745.00
01-16-85 ACCOUNTING	A14220 7 SOFTWARE	COMPUTER CORNER	\$610.65
01-16-85 ADMINISTRATIVE SER	A14221 7 COMPUTER (1)	MICROAGE	\$2,106.99
01-16-85 ADMINISTRATIVE SER	A14222 7 SOFTWARE	COMPUTER CORNER	\$362.10
01-16-85 TELECOMMUNICATIONS	A14223 7 COMPUTER (1)	MICROAGE	\$4,551.00
01-16-85 TELECOMMUNICATIONS	A14224 7 COMPUTER SOFTWARE	COMPUTER CORNER	\$1,033.65
01-16-85 OPERATIONS	A14225 7 COMPUTER (1)	MICROAGE	\$4,551.00
01-16-83 OPERATIONS	A14226 7 SOFTWARE	MICROAGE	\$610.65
01-16-85 DATA PROC	A14227 7 COMPUTER AT (1)	MICROAGE	\$5,455.00
03-07-85 C U GARAGE (FOR STREET DEPT)	A14346 7 ROTATOR	TRI RIVER TRACTOR	\$2,492.15
03-09-85 C U GARAGE (FOR STREET DEPT)	A14371 7 TRACTORS (2)	TRI RIVER TRACTOR	\$17,860.00
03-01-85 C U GARAGE (FOR UWS DEPT)	A14372 7 BACKHOE LOADER	MCDONALD MACHINERY	\$10,240.00
03-01-85 C U GARAGE (FOR STREET DEPT)	A14374 7 BACKHOE	MACHINERY	\$38,304.00
05-21-85 W/CONTROL. MAIN	A14473 7 COPIER	TEROL	\$1,037.47
05-23-85 PERSONNEL	A14474 7 COPIER	FORT WAYNE BUS PRODUCTS	\$3,687.50
05-23-85 GENERAL ACCT	A14475 7 COPIER	NEEDHAMS	\$4,095.00
05-22-85 W/CPLANT	A14726 7 COPIER	PERF CORP	\$3,928.52
06-03-85 PERSONNEL	A14563 7 PRINTER	TEROL	\$1,304.00
7-17-85 CITY GARAGE	BID 749	REID MUL.COM	\$93,279.14
7-26-85 TELECOMMUNICATIONS	SINGLE SOURCE	KLF, INC.	\$23,854.00
10-21-85 STREET DEPARTMENT	BT 2166	DEEDS EQUIPMENT	\$5,875.00
8-8-83 AMBULANCE AUTHORITY	ROTATOR RADIOS	MOTOROLA	\$103,861.15
2-19-85 AMBULANCE AUTHORITY	RECHASSIS (1) AMBULANCE	ALLEN COUNTY MOTORS	\$22,407.11
8-8-85 AMBULANCE AUTHORITY	NEW AMBULANCES (3)	RSVP INC	\$133,050.00
7-12-85 AMBULANCE AUTHORITY	AMBULANCE (1)	RSVP INC	\$44,350.00
C U GARAGE	SEWER JETS (2)	\$210,000.00 ESTIMATE, DECEMBER 1985	\$10,000.00
C U GARAGE	GRADER (1)	195,000.00 ESTIMATE, DECEMBER 1985	\$10,000.00
		TOTAL	\$1,063,143.13

11,063,143.13  
15,187,270.52

LEASE WITH OPTION TO PURCHASE AGREEMENT

This Lease, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1985, by and between a corporation organized under the laws of the State of Indiana and having its principal office in the City of Fort Wayne, Indiana (hereinafter referred to as "Lessor"), and the CITY OF FORT WAYNE, a municipal corporation of the State of Indiana by its Board of Public Works and Safety, as Leasing Agent (hereinafter referred to as "Lessee"),

WITNESSETH:

That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

1. Property Description. The Lessor does hereby lease to the Lessee the property described in "Exhibit A" attached hereto and made a part hereof, which property is hereinafter referred to as the "Leased Equipment".

2. Term of Lease. The term of this Lease shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 1985, or on or after the day of delivery of the Leased Equipment to the Lessee and the acceptance of the Leased Equipment by the Lessee, whichever date or day is later, and unless earlier terminated pursuant to the provisions of this Lease, the Lease shall continue until the date of the final Lease payment as set forth in "Exhibit B" attached hereto and made a part hereof.

3. Rent. Lessee shall pay the Lessor the amount set forth in Exhibit B hereto under the column headed "Lease Payment Amount", in cash or certified check, quarterly, beginning on the 1st day of \_\_\_\_\_, 1986, and continuing for the term hereof as set forth in

Exhibit B hereto as rental paid in arrears for the Leased Equipment. Said Lease payments shall be paid to Lessor at such address as Lessor shall indicate to the Lessee. It is agreed that such Lease payments shall be due and owing to Lessor for the Lessee's use of the Leased Equipment.

4. Option to Purchase. The Lessor hereby grants to Lessee the right and option, upon not less than sixty (60) days advanced written notice to Lessor, to purchase said Leased Equipment on any rental payment date as set forth in Exhibit B, at a purchase price equal to the amount set forth on Exhibit B entitled "Option to Purchase Value" after taking into account the Lease Payment set opposite the "Option to Purchase Value" having been made.

In the event the Lessee has not exercised the foregoing option to purchase the Leased Equipment at the expiration of this rental contract, the Lessee will quit and surrender the said Leased Equipment in as good a condition as wear and tear will permit, or may purchase, providing the rental payments have been made as heretofore provided in this contract, said Leased Equipment for the additional sum of One Dollar (\$1.00) cash.

If the Lessee exercises its option to purchase as provided in paragraph four (4) herein, the Lessor, upon payment of the purchase price, will deliver to Lessee a good and unencumbered title to the Leased Equipment herein described.

5. Taxes, Permits. Lessee agrees to pay as additional rent and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, excise or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the Leased

Equipment or its possession, use or operation by Lessee. Lessee further agrees to provide all permits and licenses necessary for the installation, operation and use of the Leased Equipment and to comply with all the applicable laws, rules, regulations and ordinances.

6. Location and Use. The Leased Equipment shall be held at and not removed from the general area of Lessee, other than in the course of an emergency, without the Lessor's written consent. Lessee will not use, operate or maintain the Leased Equipment improperly, carelessly, or in violation of any applicable law.

7. Repairs. Lessee, at its own cost and expense, shall maintain the Leased Equipment in good operating condition, repair and appearance, ordinary wear and tear excepted. At its own cost and expense, Lessee shall further replace any and all parts and devices which may from time to time become worn out. All such replacement parts and devices shall accrue to the Leased Equipment and become the property of the Lessor. The Lessor shall not be liable or responsible for any loss, damage, liability or expense of any kind caused by or related to the Leased Equipment, or resulting from any defect in or deficiency of the Leased Equipment, or resulting from the use or operation of the Leased Equipment.

8. Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Equipment or any interest therein. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. Damage or Destruction of Leased Equipment, Abatement of Rent.

(a) In the event the Leased Equipment is lost, stolen, or partially or totally destroyed, whether by fire or other casualty, so as to render the Leased Equipment unfit, in whole or in part for the use intended by Lessee, it shall then be the obligation of the Lessee to restore, repair, replace or rebuild the Leased Equipment as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessee excepted; provided, however, that Lessee shall not be obligated to expend on such restoration, repair or rebuilding more than the amount of proceeds received by the Lessee from the insurance provided for in paragraph ten (10) hereof.

Upon confirmation that there is in force on the date of such partial or total destruction insurance on the Leased Equipment in accordance with the provisions of paragraph ten (10) hereof, the rent shall be abated for the period during which the Leased Equipment or any part thereof is unfit and unusable for the use intended.

In the event Lessee fails or elects not to repair or replace or restore such Leased Equipment, within sixty (60) days after it has been lost, stolen or partially or totally destroyed, then the Lessee shall then pay to Lessor the insurance proceeds provided for in paragraph ten (10) hereof. Lessee shall pay such amount within thirty (30) days from the date of Lessee's failure or election not to repair, replace or restore the Leased Equipment, or within ninety (90) days from the date such equipment was lost, stolen or partially or totally destroyed. Lessor shall thereupon present Lessee with properly executed instruments of title and bill of sale to such Leased Equipment, and Lessee shall be

entitled to title and possession of such Leased Equipment as-is, where-is, without warranty, express or implied, with respect to any matter whatsoever except that such Leased Equipment shall not be subject to any lien or encumbrance created or arising through Lessor.

(b) No loss or damage to the Leased Equipment or any part thereof shall impose any obligation on Lessor under this agreement. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Leased Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation or storage of the Leased Equipment, whether such injury or death be with respect to agents or employees of the Lessee or of third parties, and whether such damage to property be to Lessee's property or the property of others.

10. Insurance. At its own expense, Lessee shall cause casualty insurance to be carried and maintained with respect to the Leased Equipment and shall carry public liability and property damage insurance sufficient to protect the full value of the Leased Equipment and protect the Lessor from liability in all events. The amount of insurance coverage on the Leased Equipment shall at times be at least in the amount of the applicable Option to Purchase Value. All such insurance policies shall name both the Lessor and Lessee as insureds. Prior to delivery of the Leased Equipment, Lessee shall furnish to Lessor evidence of such insurance policies, which shall be kept in full force and effect during the term of this Lease.

11. Representations and Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS

FOR PARTICULAR PURPOSE, OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT. Lessee agrees that it has selected the Leased Equipment upon its own judgment and expressly disclaims any reliance upon any statements or representations made by the Lessor or any persons on Lessor's behalf. Lessor hereby assigns to the Lessee for and during the Lease term all manufacturer's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorized Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. LESSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR CHARACTER RESULTING FROM THE USE, MISUSE, OPERATION OR MAINTENANCE OF THE LEASED EQUIPMENT BY THE LESSEE.

Lessee represents and warrants that it has the power to enter into this Lease, that procedures for execution of this Lease required by all applicable laws, regulations and ordinances, including competitive bidding if applicable, have been complied with, and that all Lease payments will be paid out of funds which are legally available for such purposes.

12. Events of Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default: (a) Lessee shall fail to make any Lease payment, or to pay other payments to be paid hereunder, or (b) Lessee shall fail to keep any such other term, covenant or condition herein. Upon the occurrence of any event of default as specified above, and Lessee shall fail

to remedy such event of default with all reasonable dispatch within a period of thirty (30) days after receipt of notice in writing, then Lessor shall have the right at its option without further demand or notice, to pursue any one or more of the following remedies: (a) re-enter and take possession of the Leased Equipment and sell, lease or sublease it; (b) take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due to enforce the performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

13. Defaults. If the Lessee shall default in the payment of any Lease payment or other sums payable to Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor, or in the observance of any other covenant, agreement or condition hereof, and such default shall continue for thirty (30) days after written notice to correct the same, then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, or the Lessor, at its option, without further notice, may terminate the interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to assume possession of the Leased Equipment and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereunder maturing prior to the Lessor's actual taking of the Leased

Equipment. No waiver by Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. Assignment. This Agreement, and the obligation of Lessee to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice Lessee agrees to make all payments to the Assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the Assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its Assignee to protect their interests in the Equipment and in this Agreement. Lessee shall not have the right to assign its right, duties and obligations under this Lease, either in whole or in part, without the prior written consent of Lessor and its Assignee.

15. Title. Upon the assignment of this Lease as set forth in paragraph fourteen (14) hereof, title to the Leased Equipment and any and all additions, repairs, replacements or modifications thereto shall be in the name of the Assignee. The Lessee shall have no right, title or interest in the Leased Equipment or any additions, repairs, replacements, modifications thereto except as expressly set forth in this Lease.

16. Offset. Rentals or other sums payable by Lessee pursuant to this Lease shall not be subject to offset, deduction, counterclaim, or

abatement except as provided herein under paragraph nine (9) hereof or because of restriction of the Lessee's use of the Leased Equipment in breach of the terms of this Lease by Lessor.

17. Termination and Expiration. Lessee agrees to initiate all appropriations necessary to carry out the terms of this Lease, provided, however, that such appropriations shall be subject to the approval of all approving agencies both state and local. In the event of the disapproval of any such appropriation by any such agency, this Lease shall be terminated at the end of the period for which Lease payments have been validly appropriated and paid. Lessee shall give Lessor immediate notice in writing of any such disapproval of appropriations.

Upon termination or expiration of this Lease, the Lessee shall return the Leased Equipment in the condition, repair, appearance and working order required in paragraph seven (7) hereof (unless the Lessee has paid Lessor the then current option purchase price for such Leased Equipment), in the manner as may be specified by Lessor, by delivering the Leased Equipment at Lessee's cost and expense to such place as Lessor shall specify within the continental United States by any appropriate method chosen by Lessee.

Lessee shall obtain all governmental authorizations to permit the return of the Leased Equipment to Lessor, and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

18. Notice. All notices to be given under this Lease shall be made in writing and mailed to the other party at the following address or at such address as the party may provide in writing from time to time:

LESSOR:

LESSEE:

City of Fort Wayne  
Board of Public Works  
One Main Street  
Fort Wayne, Indiana 46802

19. Miscellaneous. The waiver by Lessor of the Lessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. This Lease, together with the Exhibits hereto, constitutes the entire Agreement between the parties and shall not be modified, altered or changed except in writing. This Lease shall be governed by laws of the State of Indiana and any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

20. Acceptance of Lease. This Lease shall not be binding upon the Lessor until accepted and approved by the Lessor.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

LESSOR:

By: \_\_\_\_\_

LESSEE:

CITY OF FORT WAYNE, INDIANA  
By Its Board of Public Works  
and Safety as Leasing Agent  
for the City of Fort Wayne

MAYOR, City of Fort Wayne

Chairman

Member

City Agency	Description	Equipment Supplier	Amount
04-17-85 BOARD OF SAFETY	A37626 7 SOFTWARE	COMPUTER CORNER	\$703.45
05-28-85 STREET DEPT	A10028 1 RADIO PARTS	MOTOROLA	\$2,994.00
04-22-85 BOARD OF WORKS	A10042 1 COPIER	IBM	\$11,201.00
05-22-85 STREET DEPT	A10043 1 COPIER	PERRY	\$4,222.85
05-23-85 EL. DEVEL.	A10044 1 COPIER	HOOSIER PHOTO	\$8,516.25
CITY CLERK	A10079 1 COPIER UPGRADE \$500	FORT WAYNE BUS PRODUCTS	\$1,472.50
05-23-85 BOARD OF SAFETY	A10329 7 SOFTWARE	COMPUTER CORNER	\$928.50
06-12-84 C U GARAGE (STREET DEPT)	A12439 1 SNOW PLOW	DEED EQUIPMENT	\$7,491.00
08-27-84 PURCHASING	A12794 7 SOFTWARE	LOGIC BASE	\$1,084.00
10-15-84 CITY U GARAGE	A13283 1 LIFTS	HARRON MAINT	\$13,422.00
01-02-85 C U GARAGE (WPCM DEPARTMENT)	A13905 2 AIR COMPRESSORS	MCDONALD MACHINERY	\$18,400.00
03-06-85 C U GARAGE	A14192 1 COMPUTER PRINTER	TYPER SYSTEMS	\$2,750.00
04-15-85 CITY U GARAGE	A14215 1 COMPUTER (1)	MICROAGE	\$2,106.00
04-16-85 PERSONNEL	A14216 1 SOFTWARE	COMPUTER CORNER	\$301.15
04-16-85 PURCHASING	A14217 2 SOFTWARE	COMPUTER CORNER	\$610.45
04-16-85 PURCHASING	A14218 1 COMPUTER (1)	MICROAGE	\$2,745.00
04-16-85 ACCOUNTING	A14219 1 COMPUTER (1)	MICROAGE	\$2,745.00
04-16-85 ACCOUNTING	A14220 1 SOFTWARE	COMPUTER CORNER	\$610.45
04-16-85 ADMINISTRATIVE SER	A14221 1 COMPUTER (1)	MICROAGE	\$2,106.99
04-16-85 ADMINISTRATIVE SER	A14222 1 SOFTWARE	COMPUTER CORNER	\$342.10
04-16-85 TELECOMMUNICATIONS	A14223 1 COMPUTER (1)	MICROAGE	\$4,551.00
04-16-85 TELECOMMUNICATIONS	A14224 1 COMPUTER SOFTWARE	COMPUTER CORNER	\$1,033.45
04-16-85 OPERATIONS	A14225 1 COMPUTER (1)	MICROAGE	\$4,551.00
04-16-85 OPERATIONS	A14226 1 SOFTWARE	MICROAGE	\$610.45
04-16-85 DATA PROC	A14227 1 COMPUTER (1)	MICROAGE	\$5,455.00
05-07-85 C U GARAGE (FOR STREET DEPT)	A14316 1 ROTATOR	TRI RIVER TRACTOR	\$2,692.15
05-09-85 C U GARAGE (FOR STREET DEPT)	A14371 1 TRACTORS (2)	TRI RIVER TRACTOR	\$17,860.00
05-09-85 C U GARAGE (FOR WAS DEPT)	A14372 1 BACKHOE LOADER	MCDONALD MACH	\$10,210.00
05-09-85 C U GARAGE (FOR STREET DEPT)	A14374 1 BACKHOE	ZEROLI	\$18,304.00
05-23-85 W/CONTROL. MAIN	A14473 1 COPIER	FOR WAYNE BUS PRODUCTS	\$1,037.47
05-23-85 PERSONNEL	A14474 1 COPIER	NEERHAMS	\$1,887.30
05-23-85 GENERAL ACCT	A14475 1 COPIER	PERRY CORP	\$1,887.30
05-22-85 W/PLANT	A14476 1 COPIER	TERRI	\$1,920.52
06-01-85 PERSONNEL	A14563 1 PRINTER	TERRI	\$1,506.00
7-17-85 CITY GARAGE	A11049 7 BITUMINOUS PAVER	REID HOL CORP	\$93,279.14
7-26-85 TELECOMMUNICATIONS	A11164 1 DATA CON 11 RELEASE 9003	KLF, INC.	\$23,054.00
10-21-85 STREET DEPARTMENT	A145370 1 ROLLER (1)	DEEDS EQUIPMENT	\$5,075.00
0-9-85 AMBULANCE AUTHORITY	10-9-85 AMBULANCE AUTHORITY	MOTOROLA	\$103,861.15
2-19-85 AMBULANCE AUTHORITY	RECHASSIS (1) AMBULANCE	ALLEN COUNTY MOTORS	\$72,607.11
0-9-85 AMBULANCE AUTHORITY	NEW AMBULANCES (3)	RSPP INC	\$133,050.00
7-12-85 AMBULANCE AUTHORITY	AMBULANCE (1)	RSPP INC	\$44,350.00
C U GARAGE	SEWER JETS (2)	\$210,000.00 ESTIMATE, DECEMBER 1985 B10	\$195,000.00 ESTIMATE, DECEMBER 1985 B10
C U GARAGE	GRADER (1)	\$290,000 ESTIMATE, DECEMBER 1985 B10	\$1,061,443.00
<i>Complaints aided Dipath</i>		<i>1,353,143.00</i>	<i>5,477,220</i>

*1,353,143.00*  
*5,477,220*

*1,353,143.00*  
*5,477,220*

BILL NO. S-85-12-01

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS  
REFERRED AN (ORDINANCE) (RESOLUTION)

ORDINANCE DESIGNATING THE BOARD OF PUBLIC WORKS AND SAFETY  
AS LEASING AGENT FOR THE CITY OF FORT WAYNE, INDIANA: APPROVING  
THE LEASE OF CERTAIN PROPERTY BY THE CITY OF FORT WAYNE, INDIANA  
AND/OR ITS MUNICIPALLY OWNED UTILITIES: APPROVING A FORM OF LEASE:  
AUTHORIZING ACCEPTANCE OF A LESSOR: AND APPROVING OTHER ACTIONS WITH  
RESPECT THERETO

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG  
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)

(RESOLUTION) XXXXXX

DO PASS

DO NOT PASS

WITHDRAWN

YES

NO

BEN A. EISBART  
CHAIRMAN

JANET G. BRADBURY  
VICE CHAIRWOMAN

SAMUEL J. TALARICO

THOMAS C. HENRY

JAMES S. STIER

CONCURRED IN 12-10-85

SANDRA E. KENNEDY  
CITY CLERK

2 SPECIAL ORDINANCE NO. S-

3 ORDINANCE DESIGNATING THE BOARD OF PUBLIC WORKS  
4 AND SAFETY AS LEASING AGENT FOR THE CITY OF FORT WAYNE,  
5 INDIANA; APPROVING THE LEASE OF CERTAIN PROPERTY BY THE  
6 CITY OF FORT WAYNE, INDIANA AND/OR ITS MUNICIPALLY OWNED  
7 UTILITIES; APPROVING A FORM OF LEASE; AUTHORIZING  
8 ACCEPTANCE OF A LESSOR; AND APPROVING OTHER ACTIONS  
9 WITH RESPECT THERETO.

10 WHEREAS, the City of Fort Wayne and its municipally owned  
11 utilities need to acquire an extensive number of items of personal  
12 property for continued effective operations; and

13 WHEREAS, the Board of Public Works and Safety has, in the  
14 past, generally coordinated the acquisition of items of personal  
15 property and has let bids therefore; and

16 WHEREAS, numerous bids have been let for the acquisition of  
17 items of personal property, and this Common Council has approved the  
18 acquisition of said items of personal property; and

19 WHEREAS, this Common Council now deems it in the public  
20 interest to lease said items of personal property rather than  
21 purchase said items; and

22 WHEREAS, sufficient money has been appropriated and suf-  
23 ficient net revenues are available from the City's municipally owned  
24 utilities to make lease rental payments on a timely basis as  
25 required for the leasing of said property; and

26 WHEREAS, a form of lease with option to purchase has been  
27 reviewed and is deemed appropriate for the lease of said items of  
28 personal property by the City and/or its utilities; and

29 WHEREAS, notices have been published requesting proposals  
30 from lessors to acquire the items of personal property and to lease  
31 same to the City and its utilities, pursuant to the terms and con-  
32 ditions contained in the form of lease; and

33 WHEREAS, the proposed lease provides for fair and reason-  
34 able rental and other equitable terms and conditions and, further,  
35 that the execution of said lease will permit the use and acquisi-  
36

tion of said property within the present financial capabilities of the City and its utilities and therefore same is in the public interest.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE  
CITY OF FORT WAYNE, INDIANA THAT:

SECTION 1. This Common Council finds that the Board of Public Works and Safety should be and hereby is designated as the leasing agent for the City of Fort Wayne, Indiana and its utilities for the transactions herein contemplated.

SECTION 2. The Common Council of the City of Fort Wayne  
hereby authorizes the City and its utilities to lease, as lessees,  
those items of personal property listed on the attached Exhibit "A",  
made a part hereof. It is understood that the exact lessor purchase  
costs for such items of personal property listed on the Exhibit "A"  
shall be determined in accordance with bidding procedures of this  
City and accordingly subject to approval by this Council.

SECTION 3. The form of the lease, with option to purchase, for said lease is attached hereto as a part hereof, as Exhibit "B". This form of lease, with option to purchase, shall be used by the City and its utilities for the transactions herein contemplated and said form of lease is hereby approved and ratified. This lease form may be modified only to the extent that such modifications are not material in form or consideration. Authority is hereby given for the Board of Public Works and Safety to enter into one lease or two leases as determined by the City Attorney and Bond Counsel.

SECTION 4. The Board of Public Works and Safety of the City of Fort Wayne is hereby designated as the City's leasing agent herein and as said leasing agent is empowered and authorized to award lessor rights to the most responsive and responsible bidder.

SECTION 5. The Mayor and the Board of Public Works and Safety are empowered and authorized to execute, on behalf of the City and its utilities, leases and other documents as contemplated

1 herein with the lessor so selected.

2 SECTION 6. Lease payments for all Civil City leases  
3 entered into hereunder shall be subject to annual appropriation by  
4 this Council.

5 SECTION 7. This Ordinance shall be in full force and  
6 effect from and after its passage and approval by the Mayor.

7

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8 Councilmember

9 APPROVED AS TO FORM AND LEGALITY.

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11   
Bruce O. Boxberger, City Attorney  
12 Dated this 20 day of December, 1985.

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Lease Property Summary

Equipment

Amount

<u>City Agency</u>	<u>Description</u>	<u>Supplier</u>	<u>Amount</u>
POLICE DEPT	AJ1552 10 RADIOS	GENERAL ELECTRIC	\$106,995.69
FIRE DEPT	A14899 10 FIRE PUMPER	SUPHEN CORP	\$796,794.00
FIRE DEPT	A1900 10 FIRE PUMPER/AERIAL	SUPHEN CORP	\$367,745.00
COMMUNICATIONS	A15187 10 RADIOS	MOTOROLA C & E	\$66,420.00
STREET DEPT	A16186 10 SCALE	ANTIBUS & CO	\$25,087.00
COMMUNICATIONS	A16146 10 ELECTRONIC EQUIPMENT	MOTOROLA	\$209,214.00
STREET DEPT	A16699 10 ASPHALT PLANT	ASPHALT EQUIPMENT	\$156,020.00
TRAFFIC ENG	A16738 10 FIRE ALARM DECODERS	KOHLINGER KAUSE	\$72,690.00
C U GAR. 11-MIN, 1-NPCM, 1-STREET	A14373 10 FRONT END LOADERS (3)	MACDONALD MACHINERY	\$133,026.00
BOARD OF WORKS	A14925 10 INFRASTRUCTURE	DATA GENERAL	\$445,380.00
BOARD OF WORKS			\$207,633.00 ESTIMATE DECEMBER 1983 BID

\$2,577,056.69

\$2,577,056.69

ANIMAL CONTROL	A28406 4 FORD FAIRMOUNT WAGON	ALLEN COUNTY MOTORS	\$5,700.00
TRAFFIC ENG	A13159 4 BARITACADE	THREE RIVERS	\$775.00
C U GARAGE (FOR POLICE DEPT)	A13919 4 DODGE DIPLOMATS (20)	GLENBROOK DODGE	\$229,219.00
CITY U GARAGE	A13920 4 CHEV SEDANS/MAGONS (13)	HEFNER	\$122,101.86
CITY U GARAGE	A13921 4 CHEVROLET SEADS (18)	HEFNER	\$140,623.38
CITY U GARAGE	A13924 4 CAB AND CHASSIS (7)	LINCOLNWAY	\$347,483.00
CITY U GARAGE	A13925 4 FOR CARGO VAN	BOB JACKSON	\$11,020.23
CITY U GARAGE	A13926 4 FOUR WHEEL DRIVES (3)	HEFNER	\$42,922.92
CITY U GARAGE	A13927 4 PICK UP TRUCKS (3)	HEFNER	\$25,213.89
CITY U GARAGE	A13928 4 CARGO VAN	BOB JACKSON FORD	\$22,042.87
CITY U GARAGE	A13929 4 CARGO VANS (4)	BOB JACKSON FORD	\$41,484.44
CITY U GARAGE	A13930 4 TANDEM TRUCK	LINCOLNWAY	\$46,615.00
CITY U GARAGE	A13931 4 TRUCKS (12)	ALLEN COUNTY MOTORS	\$176,595.39
CITY U GARAGE	A13932 4 FOUR WHEEL DRIVE	DANIEL GLAS	\$13,500.00
CITY U GARAGE	A13933 4 PICK UP TRUCKS (15)	BOB JACKSON FORD	\$176,275.38
CITY U GARAGE	A13934 4 SINGLE AXLES (4)	LINCOLNWAY	\$101,866.00
CITY U GARAGE	A13935 4 FORD TRUCK	BOB JACKSON	\$22,882.00
CITY U GARAGE	A14370 4 CHEVROLET SUBURBAN (1)	DEHAVEN CHEVROLET	\$15,447.04

\$1,547,020.00

\$1,547,020.00

STREET DEPT	A35042 7 SLEEPSTER BROOM	MAC DONALD MACHINERY	\$5,175.00
COMMUNICATIONS	A15360 7 WALLS	DIERTRICH ACOUSTIC	\$6,120.00
TRAFFIC ENG	A16339 7 CUTTER MACHINE	TRIMON	\$2,030.00
10-17-84	A17553 7 RECORDER SYSTEM	DICTAPHONE CORP	\$35,000.00
11-30-84	A17970 7 INTERFACE PANELS	GENERAL ELECTRIC	\$2,380.00
02-11-85	A18553 7 PORTABLE RADIO	MOTOROLA	\$1,914.00
TRAFFIC ENG	A18818 7 WELDER	NOVAK AND WILLIAMS	\$1,300.00
03-11-85	A19100 7 AIR COMPRESSOR	MAC DONALD MACHINERY	\$9,300.00
03-04-85	A19102 7 AIR BOARD	HI YU INC	\$7,580.00
03-19-85	A19227 7 SAFETY DRUMS	FLASHER BARCODE	\$3,112.00
STREET ENGINEERING	A19615 7 COMPUTER SOFTWARE	COMPUTER CORNER	\$132.50
04-14-85	A19616 7 COMPUTER AT (1)	MICROAGE	\$7,570.00
STREET ENGINEERING	A19617 7 COMPUTER COLOR (1)	MICROAGE	\$9,055.00
STREET DEPT	A19618 7 PRINTER	MICROAGE	\$1,050.00
04-17-85	A19619 7 SOFTWARE	COMPUTER CORNER	\$662.30
COMMUNICATIONS	A19620 7 COMPUTER (2)	MICROAGE	\$5,490.00
04-17-85	A19621 7 COMPUTERS (2)	MICROAGE	\$5,490.00
05-22-85	A19622 7 SOFTWARE	COMPUTER CORNER	\$602.30
05-22-85	A19623 7 COMPUTER (2)	MICROAGE	\$5,490.00
04-17-85	A19624 7 SOFTWARE	COMPUTER CORNER	\$602.30
04-17-85	A19625 7 COMPUTERS (3)	MICROAGE	\$10,041.00

Lease Property Summary (Cont.)

City Agency	Equipment Description	Supplier	Amount
04-17-85 BOARD OF SAFETY	A3926 7 SOFTWARE	COMPUTER CORNER	\$903.00
05-28-85 STREET DEPT	A4028 7 RADIO PARTS	MOTOROLA	\$2,994.00
04-22-85 BOARD OF WORKS	A40042 7 COPIER	IBM	\$11,201.00
05-22-85 STREET DEPT	A40043 7 COPIER	PERRY	\$4,222.85
05-23-85 EC. DEVEL.	A40044 7 COPIER	HOSTER PHOTO	\$8,516.25
05-23-85 CITY CLERK	A40074 7 COPIER UPGRADE 4500	FORT WAYNE BUS PRODUCTS	\$7,472.50
06-12-84 BOARD OF SAFETY	A40329 7 SOFTWARE	COMPUTER CORNER	\$926.00
08-27-84 C U GARAGE (STREET DEPT)	A42359 7 SNOW PLOW	DEED EQUIPMENT	\$7,491.00
10-15-84 PURCHASING	A42794 7 SOFTWARE	LOGIC BASE	\$1,084.00
01-02-85 CITY U GARAGE	A43283 7 LIFTS	HARMON MAINT	\$13,422.00
03-06-85 C U GARAGE (PON DEPARTMENT)	A43905 7 AIR COMPRESSORS	MCDONALD MACHINERY	\$18,600.00
04-15-85 CITY U GARAGE	A41822 7 COMPUTER PRINTER	KRIVER SYSTEMS	\$2,750.00
04-16-85 PERSONNEL	A41215 7 COMPUTER (1)	MICROAGE	\$2,168.00
04-16-85 PERSONNEL	A41216 7 SOFTWARE	COMPUTER CORNER	\$301.15
04-16-85 PURCHASING	A41217 7 SOFTWARE	COMPUTER CORNER	\$610.65
04-16-85 PURCHASING	A41218 7 COMPUTER (1)	MICROAGE	\$2,715.00
04-16-85 ACCOUNTING	A41219 7 COMPUTER (1)	MICROAGE	\$2,715.00
04-16-85 ACCOUNTING	A41220 7 SOFTWARE	COMPUTER CORNER	\$610.65
04-16-85 ADMINISTRATIVE SER	A41221 7 COMPUTER (1)	MICROAGE	\$2,168.00
04-16-85 ADMINISTRATIVE SER	A41222 7 SOFTWARE	COMPUTER CORNER	\$302.10
04-16-85 TELECOMMUNICATIONS	A41223 7 COMPUTER (1)	MICROAGE	\$1,551.00
04-16-85 TELECOMMUNICATIONS	A41224 7 COMPUTER SOFTWARE	COMPUTER CORNER	\$1,033.65
04-16-85 OPERATIONS	A41225 7 COMPUTER (1)	MICROAGE	\$4,551.00
04-16-85 OPERATIONS	A41226 7 SOFTWARE	MICROAGE	\$610.65
04-16-85 DATA PROC	A41227 7 COMPUTER AT (1)	MICROAGE	\$5,455.00
05-07-85 C U GARAGE (FOR STREET DEPT)	A41346 7 ROTATOR	TRI RIVER TRACTOR	\$2,692.15
05-09-85 C U GARAGE (FOR STREET DEPT)	A41371 7 TRACTORS (2)	TRI RIVER TRACTOR	\$17,840.00
05-09-85 C U GARAGE (FOR MHS DEPT)	A44372 7 BACKHOE LOADER	MCDONALD MACHINERY	\$10,290.00
05-23-85 MPCONTROL MAIN	A44374 7 BACKHOE	MACHINERY	\$19,304.00
05-23-85 PERSONNEL	A44473 7 COPIER	YEROK	\$1,837.47
05-23-85 GENERAL ACCT	A44474 7 COPIER	FORT WAYNE BUS PRODUCTS	\$3,887.50
05-23-85 MPCPLANT	A44475 7 COPIER	NEEDMANS	\$4,895.00
05-22-85 PERSONNEL	A44476 7 COPIER	PERRY CORP	\$3,928.52
06-03-85 CITY GARAGE	A4563 7 PRINTER	TECON	\$1,506.00
7-17-85 TELECOMMUNICATIONS	BID 749	BITUMINOUS PAVER	\$93,279.14
7-26-85 STREET DEPARTMENT	SINGLE SOURCE A1464	DATA COM II RELEASE 8003	\$23,654.00
10-21-85 AMBULANCE AUTHORITY	QT 2166	ROLLER (1)	\$5,875.00
8-9-85 AMBULANCE AUTHORITY		MOTOROLA RADIOS	\$103,841.15
2-19-85 AMBULANCE AUTHORITY		RECHASSIS (1) AMBULANCE	\$22,407.11
8-9-85 AMBULANCE AUTHORITY		NEW AMBULANCES (3)	\$133,050.00
7-12-85 AMBULANCE AUTHORITY		AMBULANCE (1)	\$44,350.00
C U GARAGE	SEVER JETS (2)	SEVER JETS (2)	\$210,000.00 ESTIMATE, DECEMBER 1985 \$10
C U GARAGE	GRADER (1)	GRADER (1)	\$95,000.00 ESTIMATE, DECEMBER 1985 \$10
			<b>TOTAL \$1,063,143.83</b>

**TOTAL \$1,063,143.83**

**\$5,187,220.52**

LEASE WITH OPTION TO PURCHASE AGREEMENT

This Lease, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1985, by and between a corporation organized under the laws of the State of Indiana and having its principal office in the City of Fort Wayne, Indiana (hereinafter referred to as "Lessor"), and the CITY OF FORT WAYNE, a municipal corporation of the State of Indiana by its Board of Public Works and Safety, as Leasing Agent (hereinafter referred to as "Lessee"),

WITNESSETH:

That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

1. Property Description. The Lessor does hereby lease to the Lessee the property described in "Exhibit A" attached hereto and made a part hereof, which property is hereinafter referred to as the "Leased Equipment".

2. Term of Lease. The term of this Lease shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 1985, or on or after the day of delivery of the Leased Equipment to the Lessee and the acceptance of the Leased Equipment by the Lessee, whichever date or day is later, and unless earlier terminated pursuant to the provisions of this Lease, the Lease shall continue until the date of the final Lease payment as set forth in "Exhibit B" attached hereto and made a part hereof.

3. Rent. Lessee shall pay the Lessor the amount set forth in Exhibit B hereto under the column headed "Lease Payment Amount", in cash or certified check, quarterly, beginning on the 1st day of \_\_\_\_\_, 1986, and continuing for the term hereof as set forth in

Exhibit B hereto as rental paid in arrears for the Leased Equipment. Said Lease payments shall be paid to Lessor at such address as Lessor shall indicate to the Lessee. It is agreed that such Lease payments shall be due and owing to Lessor for the Lessee's use of the Leased Equipment.

4. Option to Purchase. The Lessor hereby grants to Lessee the right and option, upon not less than sixty (60) days advanced written notice to Lessor, to purchase said Leased Equipment on any rental payment date as set forth in Exhibit B, at a purchase price equal to the amount set forth on Exhibit B entitled "Option to Purchase Value" after taking into account the Lease Payment set opposite the "Option to Purchase Value" having been made.

In the event the Lessee has not exercised the foregoing option to purchase the Leased Equipment at the expiration of this rental contract, the Lessee will quit and surrender the said Leased Equipment in as good a condition as wear and tear will permit, or may purchase, providing the rental payments have been made as heretofore provided in this contract, said Leased Equipment for the additional sum of One Dollar (\$1.00) cash.

If the Lessee exercises its option to purchase as provided in paragraph four (4) herein, the Lessor, upon payment of the purchase price, will deliver to Lessee a good and unencumbered title to the Leased Equipment herein described.

5. Taxes, Permits. Lessee agrees to pay as additional rent and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, excise or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the Leased

Equipment or its possession, use or operation by Lessee. Lessee further agrees to provide all permits and licenses necessary for the installation, operation and use of the Leased Equipment and to comply with all the applicable laws, rules, regulations and ordinances.

6. Location and Use. The Leased Equipment shall be held at and not removed from the general area of Lessee, other than in the course of an emergency, without the Lessor's written consent. Lessee will not use, operate or maintain the Leased Equipment improperly, carelessly, or in violation of any applicable law.

7. Repairs. Lessee, at its own cost and expense, shall maintain the Leased Equipment in good operating condition, repair and appearance, ordinary wear and tear excepted. At its own cost and expense, Lessee shall further replace any and all parts and devices which may from time to time become worn out. All such replacement parts and devices shall accrue to the Leased Equipment and become the property of the Lessor. The Lessor shall not be liable or responsible for any loss, damage, liability or expense of any kind caused by or related to the Leased Equipment, or resulting from any defect in or deficiency of the Leased Equipment, or resulting from the use or operation of the Leased Equipment.

8. Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Equipment or any interest therein. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. Damage or Destruction of Leased Equipment, Abatement of Rent.

(a) In the event the Leased Equipment is lost, stolen, or partially or totally destroyed, whether by fire or other casualty, so as to render the Leased Equipment unfit, in whole or in part for the use intended by Lessee, it shall then be the obligation of the Lessee to restore, repair, replace or rebuild the Leased Equipment as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessee excepted; provided, however, that Lessee shall not be obligated to expend on such restoration, repair or rebuilding more than the amount of proceeds received by the Lessee from the insurance provided for in paragraph ten (10) hereof.

Upon confirmation that there is in force on the date of such partial or total destruction insurance on the Leased Equipment in accordance with the provisions of paragraph ten (10) hereof, the rent shall be abated for the period during which the Leased Equipment or any part thereof is unfit and unusable for the use intended.

In the event Lessee fails or elects not to repair or replace or restore such Leased Equipment, within sixty (60) days after it has been lost, stolen or partially or totally destroyed, then the Lessee shall then pay to Lessor the insurance proceeds provided for in paragraph ten (10) hereof. Lessee shall pay such amount within thirty (30) days from the date of Lessee's failure or election not to repair, replace or restore the Leased Equipment, or within ninety (90) days from the date such equipment was lost, stolen or partially or totally destroyed. Lessor shall thereupon present Lessee with properly executed instruments of title and bill of sale to such Leased Equipment, and Lessee shall be

entitled to title and possession of such Leased Equipment as-is, where-is, without warranty, express or implied, with respect to any matter whatsoever except that such Leased Equipment shall not be subject to any lien or encumbrance created or arising through Lessor.

(b) No loss or damage to the Leased Equipment or any part thereof shall impose any obligation on Lessor under this agreement. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Leased Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation or storage of the Leased Equipment, whether such injury or death be with respect to agents or employees of the Lessee or of third parties, and whether such damage to property be to Lessee's property or the property of others.

10. Insurance. At its own expense, Lessee shall cause casualty insurance to be carried and maintained with respect to the Leased Equipment and shall carry public liability and property damage insurance sufficient to protect the full value of the Leased Equipment and protect the Lessor from liability in all events. The amount of insurance coverage on the Leased Equipment shall at times be at least in the amount of the applicable Option to Purchase Value. All such insurance policies shall name both the Lessor and Lessee as insureds. Prior to delivery of the Leased Equipment, Lessee shall furnish to Lessor evidence of such insurance policies, which shall be kept in full force and effect during the term of this Lease.

11. Representations and Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS

FOR PARTICULAR PURPOSE, OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT. Lessee agrees that it has selected the Leased Equipment upon its own judgment and expressly disclaims any reliance upon any statements or representations made by the Lessor or any persons on Lessor's behalf. Lessor hereby assigns to the Lessee for and during the Lease term all manufacturer's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorized Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. LESSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR CHARACTER RESULTING FROM THE USE, MISUSE, OPERATION OR MAINTENANCE OF THE LEASED EQUIPMENT BY THE LESSEE.

Lessee represents and warrants that it has the power to enter into this Lease, that procedures for execution of this Lease required by all applicable laws, regulations and ordinances, including competitive bidding if applicable, have been complied with, and that all Lease payments will be paid out of funds which are legally available for such purposes.

12. Events of Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default: (a) Lessee shall fail to make any Lease payment, or to pay other payments to be paid hereunder, or (b) Lessee shall fail to keep any such other term, covenant or condition herein. Upon the occurrence of any event of default as specified above, and Lessee shall fail

to remedy such event of default with all reasonable dispatch within a period of thirty (30) days after receipt of notice in writing, then Lessor shall have the right at its option without further demand or notice, to pursue any one or more of the following remedies: (a) re-enter and take possession of the Leased Equipment and sell, lease or sublease it; (b) take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due to enforce the performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

13. Defaults. If the Lessee shall default in the payment of any Lease payment or other sums payable to Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor, or in the observance of any other covenant, agreement or condition hereof, and such default shall continue for thirty (30) days after written notice to correct the same, then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, or the Lessor, at its option, without further notice, may terminate the interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to assume possession of the Leased Equipment and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereunder maturing prior to the Lessor's actual taking of the Leased

Equipment. No waiver by Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. Assignment. This Agreement, and the obligation of Lessee to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice Lessee agrees to make all payments to the Assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the Assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its Assignee to protect their interests in the Equipment and in this Agreement. Lessee shall not have the right to assign its right, duties and obligations under this Lease, either in whole or in part, without the prior written consent of Lessor and its Assignee.

15. Title. Upon the assignment of this Lease as set forth in paragraph fourteen (14) hereof, title to the Leased Equipment and any and all additions, repairs, replacements or modifications thereto shall be in the name of the Assignee. The Lessee shall have no right, title or interest in the Leased Equipment or any additions, repairs, replacements, modifications thereto except as expressly set forth in this Lease.

16. Offset. Rentals or other sums payable by Lessee pursuant to this Lease shall not be subject to offset, deduction, counterclaim, or

abatement except as provided herein under paragraph nine (9) hereof or because of restriction of the Lessee's use of the Leased Equipment in breach of the terms of this Lease by Lessor.

17. Termination and Expiration. Lessee agrees to initiate all appropriations necessary to carry out the terms of this Lease, provided, however, that such appropriations shall be subject to the approval of all approving agencies both state and local. In the event of the disapproval of any such appropriation by any such agency, this Lease shall be terminated at the end of the period for which Lease payments have been validly appropriated and paid. Lessee shall give Lessor immediate notice in writing of any such disapproval of appropriations.

Upon termination or expiration of this Lease, the Lessee shall return the Leased Equipment in the condition, repair, appearance and working order required in paragraph seven (7) hereof (unless the Lessee has paid Lessor the then current option purchase price for such Leased Equipment), in the manner as may be specified by Lessor, by delivering the Leased Equipment at Lessee's cost and expense to such place as Lessor shall specify within the continental United States by any appropriate method chosen by Lessee.

Lessee shall obtain all governmental authorizations to permit the return of the Leased Equipment to Lessor, and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

18. Notice. All notices to be given under this Lease shall be made in writing and mailed to the other party at the following address or at such address as the party may provide in writing from time to time:

LESSOR:

LESSEE:

City of Fort Wayne  
Board of Public Works  
One Main Street  
Fort Wayne, Indiana 46802

19. Miscellaneous. The waiver by Lessor of the Lessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. This Lease, together with the Exhibits hereto, constitutes the entire Agreement between the parties and shall not be modified, altered or changed except in writing. This Lease shall be governed by laws of the State of Indiana and any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

20. Acceptance of Lease. This Lease shall not be binding upon the Lessor until accepted and approved by the Lessor.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

LESSOR:

By: \_\_\_\_\_

LESSEE:

CITY OF FORT WAYNE, INDIANA  
By Its Board of Public Works  
and Safety as Leasing Agent  
for the City of Fort Wayne

MAYOR, City of Fort Wayne

Chairman

Member